



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/582,428

08/02/2007

Kenneth W. Kwochka

TEVA-109US

4844

23122 7590 09/15/2009
RATNERPRESTIA
P.O. BOX 980
VALLEY FORGE, PA 19482

EXAMINER

TREYGER, ILYA Y

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

09/15/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/582,428	Applicant(s) KWOCHKA, KENNETH W.	
	Examiner ILYA Y. TREYGER	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1 and 14 are amended.
2. Claims 15-19 are new.
3. Claims 1-19 are examined on the merits.

Response to Arguments

4. Applicant's arguments filed 06/02/2009 have been fully considered but they are not persuasive:

5. With respect to claim 1, Applicant argues that the reference does not anticipate the claimed invention because the applicator head within each applicator head subassembly in the apparatus of Yannaci is not capable of detachment from the housing to which it is secured.

However, it is clearly depicted on the Fig. 7 of Yannaci that the backing B with bristles 60) is fully capable of being slid into the interior region from the opening, and therefore is the applicator head within the applicator head subassembly if fully capable of being detached from the housing.

In addition, any element being mechanically attached is fully capable of being mechanically detached, and therefore the claimed invention has been anticipated by the reference, since, as the Federal Circuit has stated, the claimed invention must only be capable of performing some beneficial function. See *In re Brana*, 51 F.3d 1560, 34 USPQ2d 1436 (Fed. Cir. 1995); *In re Gardner*, 475 F.2d 1389, 177 USPQ 396 (CCPA), reh 'g denied, 480 F.2d 879 (CCPA 1973); *In re Marzocchi*, 439 F.2d 220, 169 USPQ 367 (CCPA 1971). If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Art Unit: 3761

6. With respect to claim 14, Applicant argues that Yannaci does not anticipate the claimed invention because the reference does not disclose bristles on a porous backing.

However, Ikemoto teaches the brush wherein the bristles are extending from the porous backing (See rejection of the claim 14 under 35 U.S.C. 103(a) below).

7. With respect to claims 3-6 and 8, Applicant's arguments are substantially identical to arguments discussed above.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 7, 9-13, 15, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Yannaci et al. (US 6,210,057).

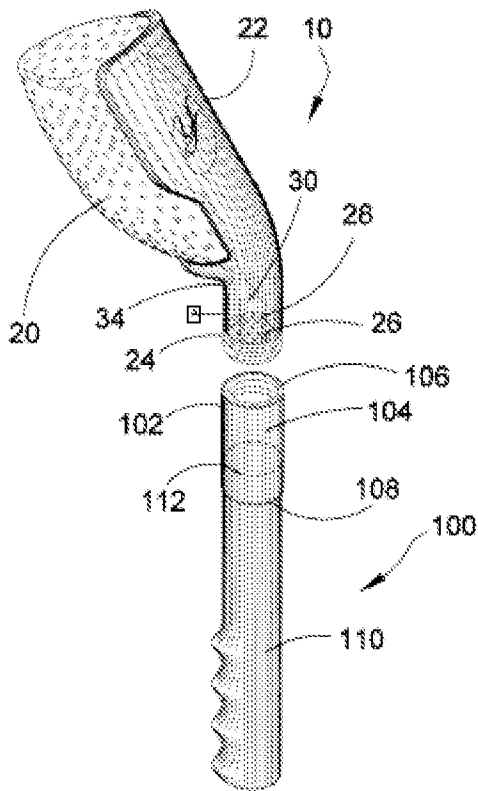
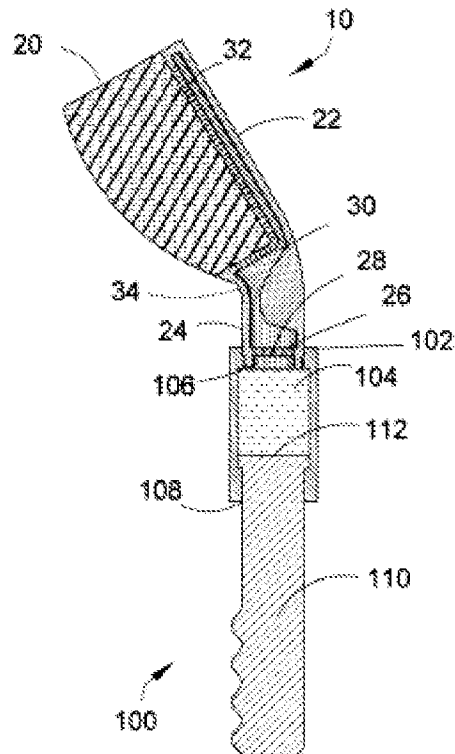
10. In Re claims 1 and 7, Yannaci discloses a liquid applicator including a reservoir 104 (Col. 6, line 5; Figs. 3 and 11) having an opening 106 (Col. 6, lines 7; Fig. 3) for dispensing the liquid contained in the reservoir and the device 10 (Col. 5, line 47; Fig. 3) comprising:

the applicator housing 22 (Col. 5, lines 59, 64; Figs. 3 and 11) that is the plate having a matrix of apertures 32 (Col. 5, line 65; Fig. 11) (claim 7);

a threaded end 24 (Col. 5, lines 55, 56; Fig. 3) that is a connector for connecting to the opening 106 (Fig. 3) in fluid communication with the opening 106 (Fig. 3) of the reservoir 104 (Fig. 3); and

Art Unit: 3761

the applicator head 22 (Fig. 3), which is a medicament applicator (Col. 6, lines 64-67) made from a fluid permeable material attached to the plate 22 (Figs. 3 and 11) and fully capable of being detachable and, consequently, replaceable.

**FIG 3****FIG 11**

11. In Re claim 2, Yannaci discloses the device, wherein the applicator head is made from sponge (Col. 7, lines 42, 43).

12. In Re claim 9, Yannaci discloses the device, wherein the applicator head has bristles (Col. 7, lines 44, 45) extending from the porous backing, since it comprises a matrix of apertures 32 (Fig. 11) interpreted as a porous backing.

Art Unit: 3761

13. In Re claim 10 and 11, Yannaci discloses the kit including a medicament application device 10 (Figs. 3 and 11) comprising a reservoir (medicament container) 104 (Figs. 3 and 11) for connection with the connector 26 (Figs. 3 and 11), wherein the reservoir 104 is interpreted as a bottle fully capable of containing a solution (claim 11).

14. In Re claim 12, Yannaci discloses the kit, wherein the bottle of solution contains a moisturizing lotion (Col. 3, line 28).

15. In Re claim 13, Yannaci discloses the kit comprising a plurality of applicator heads, such as porous head, sponge head, and brush head having bristles (Col. 7, lines 40-45).

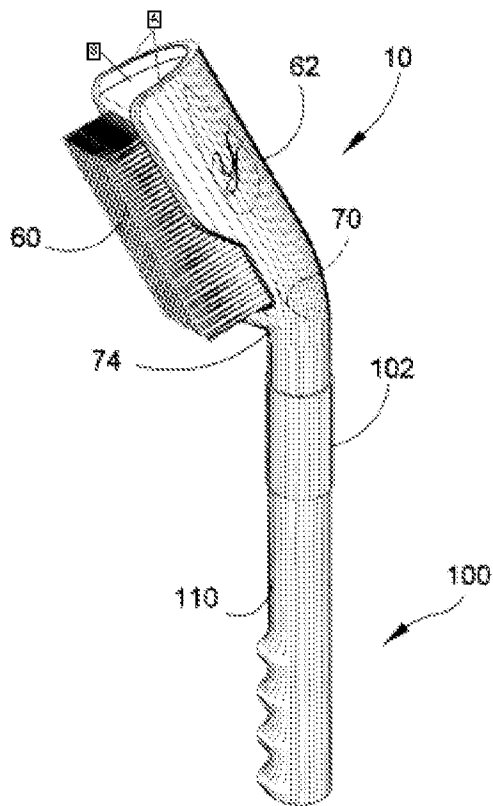
16. In Re claims 15 and 17, Yannaci discloses a liquid applicator including a reservoir 104 (Col. 6, line 5; Figs. 3 and 11) having an opening 106 (Col. 6, lines 7; Fig. 3) for dispensing the liquid contained in the reservoir and the device 10 (Col. 5, line 47; Fig. 3) comprising:

the applicator housing 22 (Col. 5, lines 59, 64; Figs. 3 and 11) that is the plate having a matrix of apertures 32 (Col. 5, line 65; Fig. 11) (claim 7);

a threaded end 24 (Col. 5, lines 55, 56; Fig. 3) that is a connector for connecting to the opening 106 (Fig. 3) in fluid communication with the opening 106 (Fig. 3) of the reservoir 104 (Fig. 3) comprising a portion A (Fig. 3) that is a stem portion; and

the applicator head 22 (Fig. 3), which is a medicament applicator (Col. 6, lines 64-67) made from a fluid permeable material attached to the plate 22 (Figs. 3 and 11) and fully capable of being detachable and, consequently, replaceable. In Re claim 18, Yannaci discloses the medicament applicator wherein the plate includes walls A (Fig. 7) extending upward and defining an interior region with an opening, wherein the backing B (Fig. 7) with bristles 60 (Fig. 7) is fully capable of being slid into the interior region from the opening.

Art Unit: 3761

**FIG 7*****Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

Art Unit: 3761

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

19. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yannaci et al. (US 6,210,057).

Yannaci discloses the invention discussed above but does not expressly disclose the apparatus wherein the medicament applicator is attached to the plate by gluing.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the medicament applicator to the plate by gluing in order to utilize the conventionally known way to connect elements, since it was known in the art that glue is to join or stick together with glue (See Collins Essential English Dictionary 2nd Edition) (**MPEP 2144.03 (A-E)**).

20. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yannaci et al. (US 6,210,057) in view of Laitner (US 3,789,451).

Yannaci discloses the invention discussed above, but does not expressly disclose the application head covered by fluid permeable material.

Laitner teaches the washing unit comprising an absorbent member (Col. 2, line 35) fully capable of applying the liquid on the surface, covered the sheet made of mesh (claim 4) (Col. 2, lines 45, 46).

Since both Yannaci and Laitner belong to the same problem solving area, i.e. maintaining the applicator head, it would have been obvious to one having ordinary skill in the art at the time the invention was made to cover the applicator head of Yannaci with the mesh sheet, as taught by Laitner in order to provide the device with the massage features.

Art Unit: 3761

21. Claims 5 and 6, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yannaci et al. (US 6,210,057) in view of Pipkin (US 4,602,650).

Yannaci discloses the invention discussed above, but does not expressly disclose the device, wherein the applicator head has been fixing to the plate by plurality of flexible hooks.

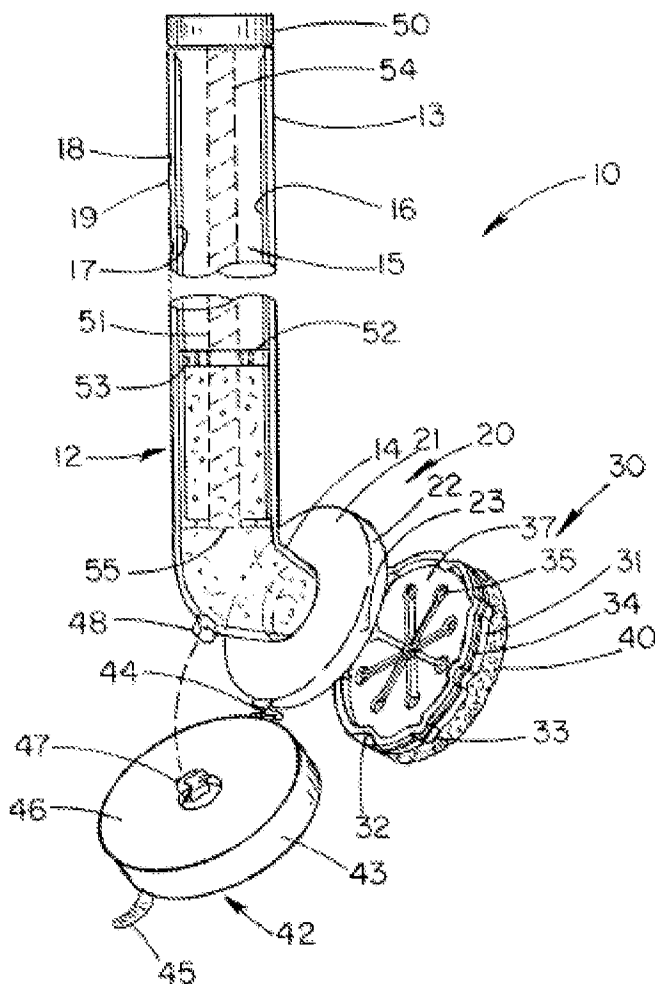
Pipkin teaches the liquid applicator, wherein the plurality of flexible hooks have been used for the fixation of elements (Col. 3, lines 35, 36), and wherein the plurality of hooks is interpreted as a plurality of protrusions, and the plurality of loops is interpreted as a plurality of holes (claim 6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Yannaci with fastening hooks/protrusions, as taught by Pipkin in order to provide the device with the conventionally known fastening system.

22. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yannaci et al. (US 6,210,057) in view of Pazienza (US 6,042,286).

Yannaci discloses the invention discussed above, but does not expressly disclose the device, wherein the hole is a star-like hole.

Pazienza teaches the lotion dispensing applicator comprising a star-like hole (See Fig.).



It would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the device of Yannaci with the star-like hole, as taught by Pazienza in order to utilize the hole of the conventionally known shape.

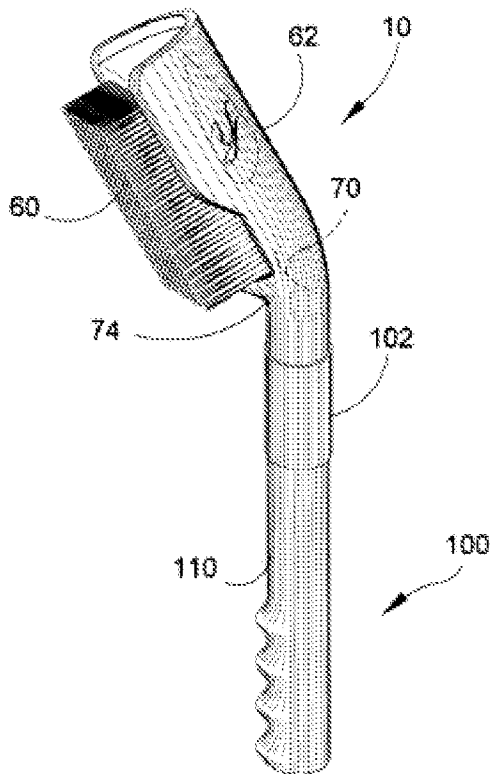
23. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yannaci et al. (US 6,210,057) in view of Ikemoto et al. (US 5,483,719). Yannaci discloses a liquid applicator including a reservoir 104 (Col. 6, line 5; Figs. 3 and 11) having an opening 106 (Col. 6, lines 7; Fig. 3) for dispensing the liquid contained in the reservoir and the device 10 (Col. 5, line 47; Fig. 3) comprising:

Art Unit: 3761

the applicator housing 22 (Col. 5, lines 59, 64; Figs. 3 and 11) that is the plate having a matrix of apertures 32 (Col. 5, line 65; Fig. 11) (claim 7);

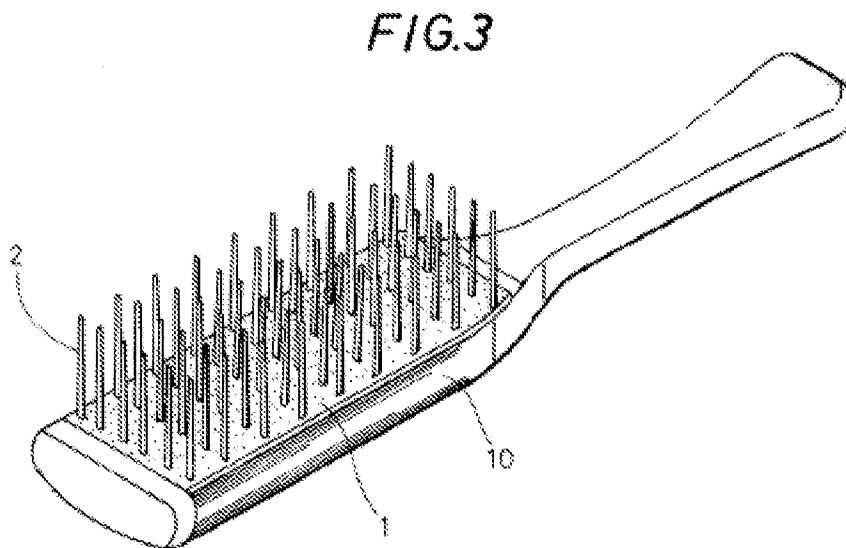
a threaded end 24 (Col. 5, lines 55, 56; Fig. 3) that is a connector for connecting to the opening 106 (Fig. 3) in fluid communication with the opening 106 (Fig. 3) of the reservoir 104 (Fig. 3); and

the applicator brush head 60 (Fig. 7) having a bristles (Col. 7, lines 44, 45).

**FIG 7**

Yannaci does not expressly disclose the liquid applicator wherein the bristles are extending from a porous backing.

Ikemoto teaches the brush wherein the bristles are 3 (Fig. 3) are extending from the porous backing 1 (Col. 2, lines 50-61; Fig. 3).



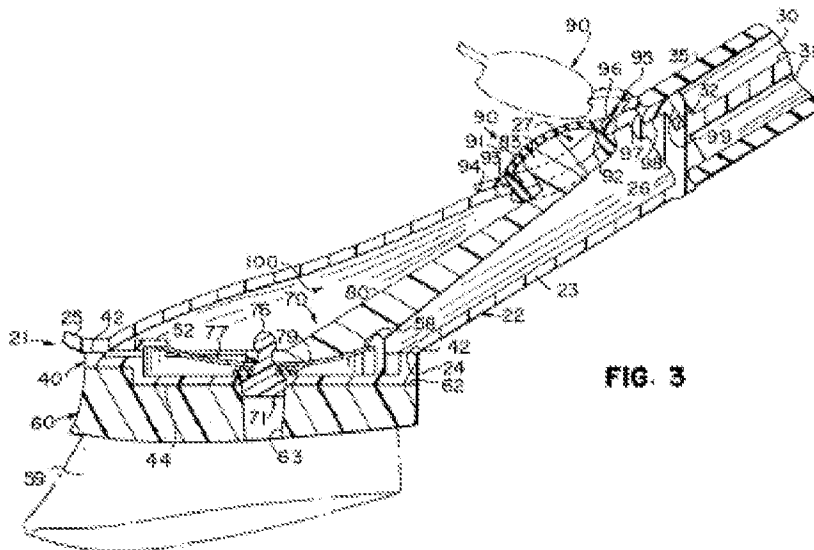
It would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the apparatus of Yannaci with the porous backing, as taught by Ikemoto in order to provide brushing and coating of a liquid substance (Ikemoto, Col. 1, lines 61-62).

24. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yannaci et al. (US 6,210,057) in view of Perry et al. (US 6,250,833).

Yannaci discloses the invention discussed above but does not expressly disclose the apparatus wherein the plate portion is releasably locked in the interior region using a resilient tab having a protrusion thereon.

Perry teaches a soap dispenser wherein the liquid applicator is attached to the base portion using a resilient tab 77 (Fig. 3) and a protrusion 76 (Col. 4, lines 44-65; Fig. 3).

Art Unit: 3761

**FIG. 3**

It would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the apparatus of Yannaci with the tab-protrusion fastener, as taught by Perry in order to utilize the fastener of the conventionally known type for connecting elements.

Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3761

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILYA Y. TREYGER whose telephone number is (571)270-3217. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ilya Y Treyger/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761